

THE COUNCIL OF STATE GOVERNMENTS RESOLUTION ON SPECIALTY HOSPITALS

Resolution Summary

The Medicare Payment Advisory Commission (MedPAC) is an independent federal body established by the Balanced Budget Act of 1997 (P.L. 105-33) to advise the U.S. Congress on issues affecting the Medicare program. The Commission's statutory mandate is to advise the Congress on payments to private health plans participating in Medicare and providers in Medicare's traditional fee-for-service program, and to analyze access to care, quality of care and other issues affecting Medicare.

The Congress, in the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) directed MedPAC and the Secretary of the Department of Health and Human Services to report to the Congress on certain issues concerning physician-owned heart, orthopedic, and surgical specialty hospitals, also known as specialty hospitals. Specifically, the law imposed an 18-month moratorium, which expired on June 8, 2005, during which physician-investors in new specialty hospitals could not refer Medicare or Medicaid patients to those hospitals, thereby effectively halting the development of new specialty hospitals. MedPAC was charged with analyzing the possible fiscal consequences of physician-owned specialty hospitals for existing community hospitals, Medicare beneficiaries, and Medicare payments.

Last summer, CMS again temporarily suspended enrollment of new specialty hospitals while the agency reviewed its procedures for enrollment. On February 8, 2006, President Bush signed the Deficit Reduction Act of 2005 (DRA) into law. A number of DRA provisions were effective January 1, 2006. The DRA continues that suspension until the earlier of six months after enactment or CMS's release of a final report on specialty hospitals required by the DRA. The DRA directs CMS to develop a strategic and implementation plan addressing these hospitals' proportionality of investment return; whether the investment is a bona fide investment; and whether the Secretary should require annual disclosure of investment information. In addition, the DRA requires the Secretary to consider the provision by specialty hospitals of care to: (a) Medicaid patients; (b) patients receiving medical assistance under a State demonstration project approved under title XI of the Act; and (c) patients receiving charity care. The DRA also requires the strategic and implementing plan to address the issue of appropriate enforcement. The DRA requires an interim report within three months and a final report within six months.

Additional Resource Information

The Medicare Payment Advisory Commission – www.medpac.gov

Centers for Medicare and Medicaid Services – www.cms.hhs.gov

Management Directives

- **Management Directive #1:** Support the extension of the moratorium on the expansion of specialty hospitals so that state legislatures can study the issue in more detail and explore possible legislative initiatives to address the specialty hospital concerns such as state licensure laws and the definition of a hospital.
- **Management Directive #2:** CSG staff will post approved resolution on CSG's web site and make available through its regular communication venues at the state and local level to ensure its distribution to the state government and policy community.

THE COUNCIL OF STATE GOVERNMENTS
Resolution on Specialty Hospitals

WHEREAS, the issue of physician ownership of specialty hospitals continues to be an issue of interest and concern in many states across the country;

WHEREAS, many states continue to see increasing growth in the number of these facilities even though numerous independent studies indicate that specialty hospitals encourage over utilization of medical services and treat limited numbers of Medicaid and uninsured patients and thereby threatening the safety net provided by community hospitals;

WHEREAS, many states considered the issue of specialty hospitals during the 2005 and 2006 legislative sessions and concluded that state legislatures need to study the issue in more detail, including possible changes to state licensure laws and to the definition of a hospital;

WHEREAS, Congress has recognized these concerns and included provisions in the recently passed Deficit Reduction Act of 2005 (DRA), requiring the Secretary of the Department of Health and Human Services (HHS) to develop a “strategic and implementing plan” to address physician ownership of specialty hospitals as defined under the physician self referral law;

WHEREAS, the DRA also instructs CMS to temporarily suspended enrollment of new specialty hospitals for a period of six months effective January 1, 2006, while HHS completes it’s strategic and implementing plan;

BE IT THEREFORE RESOLVED, that The Council of State Governments encourages the Department of Health and Human Services to conduct a thorough and complete analysis of the physician owned specialty hospital issue and to provide appropriate rules, regulations, and legislative guidance to eliminate any unfair competitive advantage that physician referrals may have and ensure that all health care providers provide appropriate support to State Medicaid programs and participate in appropriate emergency services networks.

Adopted this 10th Day of May, 2006 at the
CSG Spring National Committee and Task Force Meetings
In White Sulphur Springs, West Virginia



Governor Jim Douglas
2006 CSG President



Senate President Earl Ray Tomblin
2006 CSG Chair